

## DETAILED ACTION

### *Response to Amendment*

This Office Action is responding to applicant's amendment filed on 12/23/2009. Claim 1 has been amended. Claim 25 is newly added.

### *Response to Arguments*

Applicant amended independent claim 1 to now require a platform that is open in a radial direction to form a radial direction opening & in axial direction to form an axial direction opening, with the axial direction opening transverse to the radial direction opening.

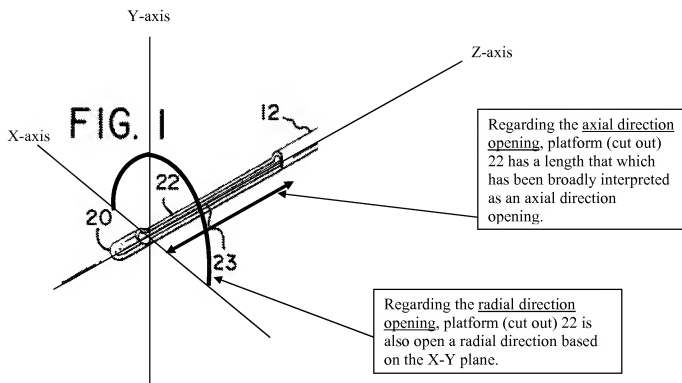
Applicant remarked that Figures 1-3 in the Berger reference teaches/discloses that close distal end (not numbered) functions as a stop such that "[t]he seating of the catheter allows the balloon portion 25 to be positioned in the cutout portion 22...", Berger, column 4 lines 66-67.

In response, on that fact, the Examiner wishes to agree as the "stop" does not appears to disclose/teach the balloon expands in the axial direction beyond the distal end of the platform 22). As such, it does not appears that the Berger reference meets applicant's newly added claim 25.

Applicant remarked that the Berger reference does not teach/disclose **a platform that is open in a radial direction to form a radial direction opening and in axial direction opening.**

Upon reviewing the Berger reference & applicant's newly amended claim 1, the Examiner respectfully disagrees.

In response, see illustrations below for interpretations of newly added a radial direction opening & an axial direction opening limitations to claim 1.



The interpretation above illustrates the axial direction opening is transverse to the radial direction opening.

The claims, as amended have been carefully considered but deemed not allowable in view of the following rejection(s).

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: platform that is open in a radial direction to form a radial direction opening.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

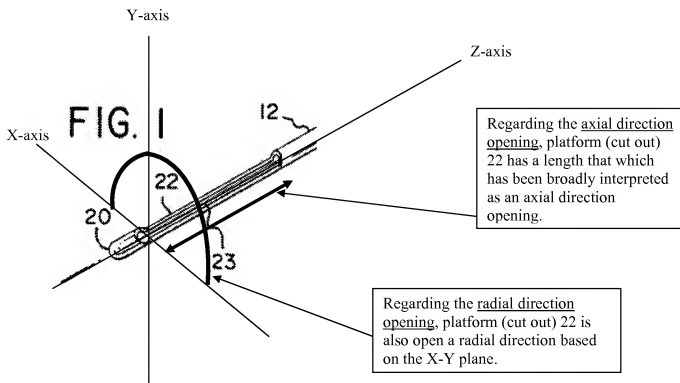
Claims 1, 4, 12, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al (U.S. Patent No. 6,248,110) in view of Berger (U.S. Patent No. 5,545,136).

Reiley et al discloses Figure 4 a hollow body (50) including a circumferential wall having a distal end, the hollow body (50) also comprising an extension that protrudes from the circumferential wall beyond the distal end but the hollow body (50). Figure 4 illustrates an expandable (56) structure.

The Reiley et al does not teach a platform that is open in a radial direction and has a side surface facing the radial direction.

Berger discloses in Figures 1, 2 & 6 illustrates a hollow catheter (12), the distal end of the catheter is extended by a platform that is open (22) in a radial direction and has a side surface (23) facing in the radial direction.

Regarding claim 1 reciting the platform that is open in a radial direction to form a radial direction opening and in axial direction opening, see illustration below.



The interpretation above illustrates the axial direction opening is transverse to the radial direction opening.

Therefore, it would have been obvious to one skilled in the art to modify the distal end of Reiley et al's hollow body (50) such that it would include an extension/platform extending beyond the distal end, such extension/platform having an opening (22) open radially & a side

surface, taught by Berger, for purposes of serving as a barrier to induce the balloon (25) to expand through the opening (22) radially away from the side surface of the platform (see Figure 6 in Berger reference).

With regards to claim 4, Figure 5K(1) illustrates the expandable structure (56) displaces a portion of the cortical bone (28) within bone (32).

With regards to claim 12, bone filling material, such as artificial bone substitute or flowable synthetic bone material or methyl methacrylate bone cement is known in the art of bone filling.

With regards to claim 23, Figures 5K(1) illustrates the hollow body (50) & its expandable structure (56) are introduced into a vertebral body (26) wherein the interior volume (30) thereof occupied by cancellous bone (32).

With regards to claim 24, the Reiley et al, modified by Berger, now renders the catheter tube (50) having an extension/platform extends beyond the distal end of catheter tube (50) from only a circumferential portion of the catheter tube's (50) circumferential wall, yielding the extension/platform extending from only a circumferential portion of the catheter tube's (50) circumferential wall and not the entire circumferential wall.

The Reiley et al/Berger combination would perform all of the steps in method claim 1.

#### ***Allowable Subject Matter***

Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Camtu T. Nguyen/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772